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**EX PARTE OR LATE FILED**

**Eric E. Breisach**

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December 5, 1996

**Mr. William F. Caton**  
**Secretary**  
**Federal Communications Commission**  
1919 M Street, NW, Room 222  
Washington, DC 20554

**Re: Certificate of Service on the Small Cable Business Association's  
Further Clarification of the Association's Ex Parte Filing in  
CS Docket No. 96-85**

Dear Mr. Caton:

We enclose for filing the Certificate of Service on the above-referenced matter. If you have any questions, please call.

Very truly yours,

**Howard & Howard**



**Eric E. Breisach**

EEB:cm  
Enclosure  
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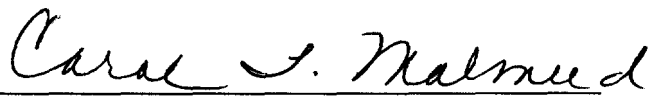
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**CERTIFICATE OF SERVICE**

I, Carol L. Malmud, certify that a copy of the attached Small Cable Business Association's Further Clarification of the Association's Ex Parte Filing in CS Docket No. 96-85, was served on this 5th day of December, 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

  
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PATENT AND TRADEMARK OFFICE

November 27, 1996

*Via Federal Express, Facsimile and U.S. Mail*

**Mr. William F. Caton**  
**Secretary**  
**Federal Communications Commission**  
**1919 M Street, NW, Room 222**  
**Washington, DC 20554**

**Re: Ex Parte Filing of the Small Cable Business Association in CS Docket No. 96-85**

Dear Mr. Caton:

On behalf of the Small Cable Business Association ("SCBA") we submit this further clarification of the association's position regarding the affiliation rules governing the definition of small cable operators under the 1996 Telecommunications Act. On October 12, 1996, SCBA submitted an ex parte filing that outlined support for allowing certain financial relationships that should not give rise to an affiliation with an investor having more than \$250 million in gross annual revenues. On November 19, 1996, David Kinley and I met with Meredith Jones and Tom Power of the Cable Services Bureau and discussed affiliation issues as outlined on the attached concept flow charts. This letter highlights the integration of two affiliation issues related to the definition of a small cable company.

### The Affiliation Concept

The Telecommunications Act requires that a small cable company meet two tests to qualify for reduced regulatory burdens. First, the company, including affiliates, must serve fewer than 617,000 total subscribers. Second, the company cannot have an affiliation with another entity generating more than \$250 million in gross annual revenues. These affiliation determinations serve two distinct purposes and require separate methods of determination.

The first test screens out large cable operators. The Commission established a workable standard in its *Small System Order*.<sup>1</sup> The Commission aggregated the cable holdings of the small operator with the cable holdings of "larger MSOs" that held more than a 20% equity interest in the small operator. This rule allowed the Commission the necessary discretion to prevent ineligibly large cable operators from attempting to gain benefits under the small operator rules. Similarly, it gave small cable a workable rule of thumb to determine what relationships and investment structures were problematic.

The second test screens out small operators who are controlled by large businesses that presumably have access to substantial financial resources. The defining element in this relationship is control. A large investor must have the ability to control the cable operator in order for a disqualifying affiliation to exist. SCBA has proposed several models on the record that allow identification of such control.

### SCBA Proposal

SCBA proposes that the Commission replicate its existing affiliation test used to determine compliance with the Form 1230's 400,000 subscriber limit (i.e., an MSO having more than a 20% equity interest in the small operator). To further refine this affiliation determination, SCBA suggests that the Commission consider defining an "MSO" as an entity whose primary (or at least significant) business activity is the provision of cable television service to customers. The Commission could go further and establish a presumption that any entity listed as one of the top 100 cable operators (e.g., in Warrens or Kagan) is subject to the 20% equity test.

The Commission would then determine whether a small operator qualifying by the numerical subscriber limit still qualified in spite of financial relationships with other parties. This determination requires use of another affiliation standard. In this case, the standard should rely on the ability of the investor to control the small operator. Consequently, the type of relationship (i.e., active or passive

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<sup>1</sup>*Sixth Report and Order and Eleventh Order on Reconsideration* in MM Docket Nos. 92-266 and 93-215, FCC 95-196, 10 FCC Rcd 7393 (1995) at ¶ 36, footnote 88 and 47 CFR § 76.934(a).



**Mr. William F. Caton**

**November 27, 1996**

**Page 3**

and the degree of active control) needs to undergo thorough scrutiny. If the relationship is truly passive, no affiliation should exist. If the relationship is active, and the investor holds more than 50% of the voting equity, an affiliation will probably exist. As outlined in SCBA's ex parte filing, other criteria merit consideration, including the type of entity and the ability to exercise control.

### **Summary**

The Commission should not destroy its standard of measuring the number of subscribers served by a cable operator. This standard predates the Telecommunications Act and continues to work well. The Commission should, however, adopt a more tailored methodology to determine whether a cable system has a significantly substantial relationship with a large investor so as to constitute an affiliation.

If SCBA can provide additional information regarding this vital issue to small cable, please let us know.

**Very truly yours,**

**Howard & Howard**



**Eric E. Breisach**

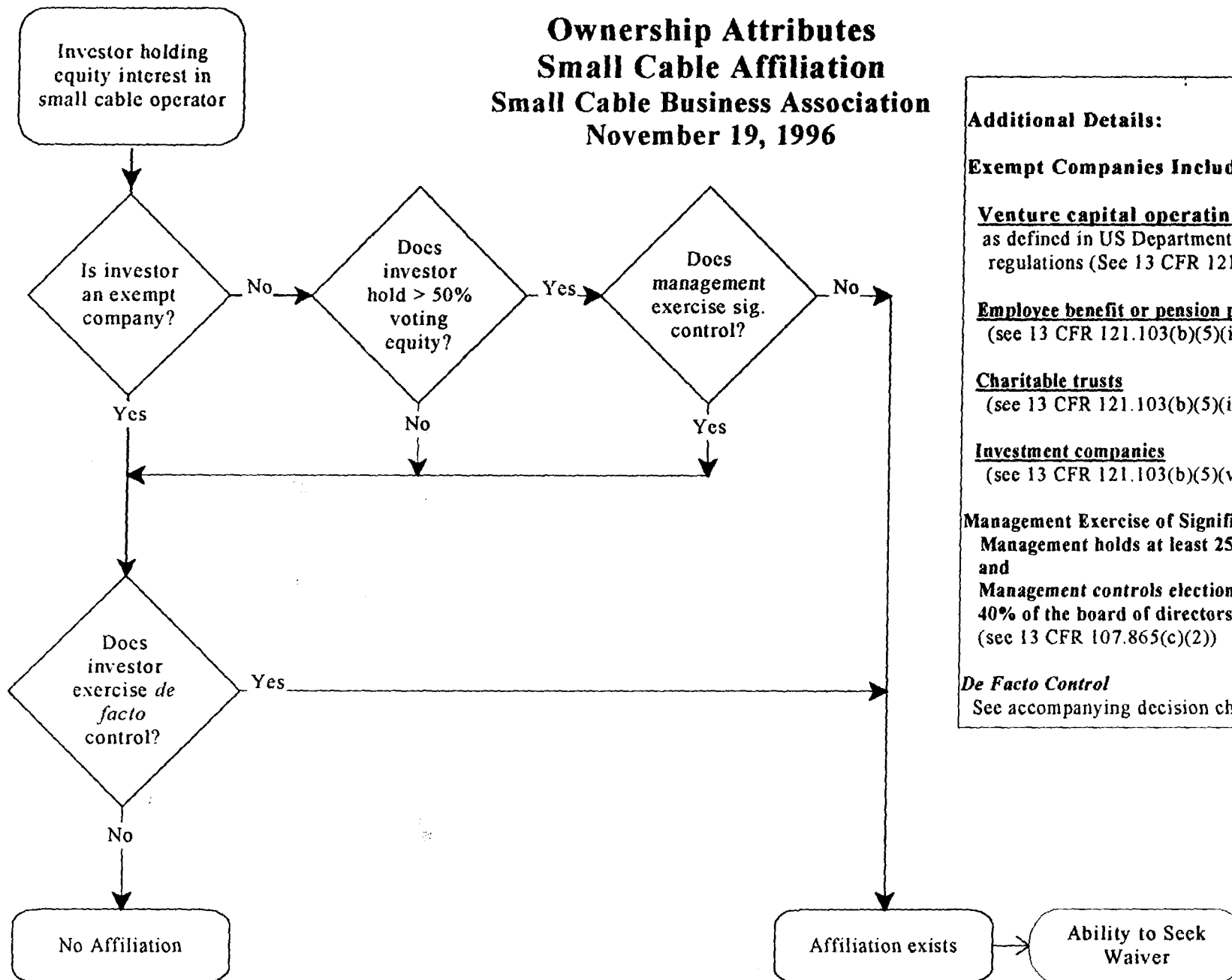
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Enclosures

cc: David D. Kinley (w/enc.)  
Meredith J. Jones (w/enc.)  
Tom Power (w/enc.)  
William Johnson (w/enc.)  
John E. Logan (w/enc.)

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**Ownership Attributes  
Small Cable Affiliation  
Small Cable Business Association  
November 19, 1996**



**Additional Details:**

**Exempt Companies Include:**

**Venture capital operating companies**  
as defined in US Department of Labor  
regulations (See 13 CFR 121.103(b)(5)(I))

**Employee benefit or pension plans**  
(see 13 CFR 121.103(b)(5)(ii) and (iii)) ;

**Charitable trusts**  
(see 13 CFR 121.103(b)(5)(iv))

**Investment companies**  
(see 13 CFR 121.103(b)(5)(v) and (vi)) ;

**Management Exercise of Significant Control:**  
**Management holds at least 25% voting equity;**  
**and**  
**Management controls election of at least**  
**40% of the board of directors**  
(see 13 CFR 107.865(c)(2))

***De Facto Control***  
See accompanying decision chart for details

**Existence of *De Facto* Control  
Small Cable Affiliation  
Small Cable Business Association  
November 19, 1996**

